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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,660	10/02/2003	Susann Marie Keohane	AUS920030640US1	9966

60501 7590 02/29/2012
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EXAMINER

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ART UNIT	PAPER NUMBER
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2163

NOTIFICATION DATE	DELIVERY MODE
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02/29/2012

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUSANN MARIE KEOHANE, SHAWN PATRICK MULLEN,
JOHNNY MENG-HAN SHIEH, GERALD FRANCIS McBREARTY, and
JESSICA MURILLO

Appeal 2009-012170
Application 10/677,660
Technology Center 2100

Before ERIC S. FRAHM, KRISTEN L. DROESCH, and JASON V.
MORGRAN, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-39. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Exemplary Claims

Exemplary claims 1 and 11 under appeal, with emphases and bracketing added, read as follows:

1. A method for providing a necessary level of security for a computer capable of connecting to different computing environments, the method comprising:

[1] monitoring a type of connection between the computer and a network in a current computing environment;

[2] determining a security level of data before sending the data across the network;

[3] *storing the data in a buffer instead of sending the data across the network if the connection to the network lacks a security control required for the determined security level of the data; and*

[4] *sending the data from the buffer when the computer is connected to a changed computing environment having a new type of connection that has the security control required for the data.*

11. A method for providing a necessary level of security for a computer capable of connecting to different computing environments, the method comprising:

[1] connecting the computer to a network in a first computing environment;

[2] specifying a security level for data to be sent across the network;

[3] instructing a sending program to send the data across the network;

[4] receiving an indication that security control of the first computing environment lacks a security control required for the specified security level;

[5] *connecting the computer to the network in a second computing environment, wherein the second computing environment has the security control required for the specified security level; and*

[6] receiving an indication that the data has been sent across the network.

Examiner's Rejections

(1) The Examiner rejected claims 1-39 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Herrero (WO 00/74345 A1) and Holden (US 5,828,832).¹ Ans. 3-8.

(2) The Examiner rejected claims 1, 14, and 27 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Herrero and Ueda (US 5,692,179).² Ans. 9-10.

¹ Separate patentability under § 103(a) is not argued for claims 2-10 and 12 rejected under § 103(a) over Herrero and Holden, and Appellants only present arguments in the brief as to the rejection of independent claims 1 and 11 (*see* App. Br. 8-13). Pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii), we consider claim 1 to be representative of claims 1-10, 14-23, and 27-36. Similarly, we consider claim 11 to be representative of claims 11-13, 24-26, and 37-39. In view of the foregoing, our discussion is limited to Appellants' arguments as to the rejection of claims 1 and 11 under § 103(a) over Herrero and Holden.

² Separate patentability under § 103(a) is not argued for claims 14 and 27 rejected under § 103(a) over Herrero and Ueda, and Appellants only present arguments in the brief as to the rejection of claim 1 (*see* Br. 13-16). Because Appellants only present arguments relating to the merits of Herrero and Ueda for claim 1, and pursuant to our authority under 37 C.F.R. §

Appellants' Contentions

(A) Appellants contend (Br. 8-13) that the Examiner erred in rejecting claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Herrero and Holden for numerous reasons, including:

(1) Holden's Waiting Queue is not equivalent to the buffer recited in claim 1 (Br. 10);

(2) Holden is not concerned with, and does not disclose, a changed computing environment having a new type of connection, as recited in claim 1 (Br. 10);

(3) Herrero's page 4, lines 5-20 merely discloses a secure connection between entities in one or more networks, and does not disclose or suggest element [5] of claim 11 (Br. 11-12); and

(4) Herrero does not change connections between a computer and a network from a first computing environment to a second computing environment (Br. 12).

(B) Appellants contend (Br. 13-16) that the Examiner erred in rejecting claims 1, 14, and 27 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Herrero and Ueda for numerous reasons, including:

(1) Ueda's column 4, lines 59-62 only discloses temporarily storing data from a database in a buffer and transmitting it, not "storing data in a buffer and sending the data from the buffer when a

41.37(c)(1)(vii), we consider claim 1 to be representative of claims 1, 14, and 27. In view of the foregoing, our discussion is limited to Appellants' arguments as to the rejection of claim 1 under § 103(a) over Herrero and Ueda.

computer is connected to a changed computing environment having new type of connection” (Br. 14-15); and

(2) “Ueda is only concerned with the security level of an inquirer, a user, a person, with respect to requested data, not the security level of a network connection” (Br. 15).

Issues on Appeal

Based on Appellants’ arguments, the following issues are presented on appeal:

(1) Has the Examiner erred in rejecting claims 1-39 as being obvious over Herrero and Holden because the combination fails to teach or suggest the network connection, security level, data buffer, and data sending/storing limitations of claims 1 and 11 at issue?

(2) Has the Examiner erred in rejecting claims 1, 14, and 27 because the combination of Herrero and Ueda fails to teach or suggest the network connection and security level limitations, as recited in claim 1?

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments in the Appeal Brief (Br. 8-16) that the Examiner has erred.

Claims 1-39: Combination of Herrero and Holden

We disagree with Appellants’ conclusions regarding claims 1-39 and the obviousness rejections over the combination of Herrero and Holden as to claims 1-39 (*see supra* Appellants’ contentions (A)(1)-(4)). With regard to the rejection of claims 1 and 11 over the combination of Herrero and Holden, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons

set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 3-8 and 10-13). We concur with the conclusions reached by the Examiner as to the rejection of claims 1 and 11.

Appellants' arguments regarding (i) Holden's failure to disclose a changed computing environment having a new type of connection as recited in claim 1 (Br. 10; *see supra* Appellants' contention (A)(2)); and (ii) Herrero's teachings (Br. 11-12; *see supra* Appellants' contention (A)(3) and (4)) are unpersuasive in light of the combined teachings and suggestions of the references.

Specifically, we agree with the Examiner (Ans. 11) that Holden's Waiting Queue that stores data and sends data is equivalent to the recited buffer (*see* Holden at col. 11, ll. 29-33). Limitations [3] and [4] of claim 1 encompass the condition that data from the buffer is sent when a connection is changed, and does not preclude data also being sent when the connection is not changed. In other words, claim 1 reads on storing data in the buffer instead of sending it across the network (e.g., like the operation of Holden's Waiting Queue), and then later sending the data from the buffer when a new secured type of connection occurs (e.g., as would occur when a new connection is sensed when switching between the multiple networks disclosed by Herrero).

Furthermore, we disagree with Appellants that (i) Herrero fails to disclose or suggest element [5] of claim 11 ("connecting the computer to the network . . ."), (ii) Herrero does not change connection between a computer and a network from a first computing environment to a second one, and (iii) Herrero's page 4, lines 5-20 only discloses secure communication between entities in one or more networks, not connecting to a second computing

environment having the security control required for the specified security level as recited in claim 11. We agree with the Examiner (Ans. 12) that Herrero discloses multiple networks constituting computing environments for connections (*see* page 2, lines 20-22; page 4, lines 5-20; Home PLMN and Visitor PLMN environments).

Claims 1, 14, and 27: Combination of Herrero and Ueda

With regard to the rejection of claims 1, 14, and 27 over the combination of Herrero and Ueda, we agree with Appellants' conclusion that Ueda, and thus the combination of Herrero and Ueda, fails to teach or suggest (i) storing data in a buffer if a network connection lacks a security control, and (ii) "sending the data from the buffer when the computer is connected to a changed computing environment having a new type of connection that has the security control," as set forth in claim 1.

The Examiner relies upon column 4, lines 59-62 of Ueda as teaching temporarily storing and transmitting data to/from a buffer (*see* Ans. 9-10), and relies upon column 5, lines 48-50 and 52-56 of Ueda as disclosing determining a predetermined condition of a network and storing data in a buffer if it is determined that the condition of the network is not satisfied (*see* Ans. 14).

However, we find that the Examiner has not sufficiently demonstrated that Ueda's column 4, lines 59-62 teaches or suggests (i) storing data in a buffer *if a network connection lacks a security control*, and (ii) "sending the data from the buffer when the computer is connected to a changed computing environment having *a new type of connection that has the security control*," as set forth in claim 1 (italicized emphasis added). Instead, we agree with Appellants (Br. 15) that Ueda is concerned with the

security level of an inquirer or user with respect to requested data, and not the security level of a *network connection* as required by the language of claim 1.

Accordingly, we agree with Appellants' contentions that the Examiner erred with respect to the rejection of claims 1, 14, and 27 over the combination of Herrero and Ueda (*see supra* Appellants' contentions (B)(1) and (2)).

CONCLUSIONS

(1) The Examiner has not erred in determining that the combination of Herrero and Holden teaches or suggests the network connection, security level, data buffer, and data sending/storing limitations of independent claims 1 and 11 at issue.

(2) The Examiner has not erred in rejecting claims 1-39 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Herrero and Holden.

(3) The Examiner erred in rejecting claims 1, 14, and 27 because Ueda, and thus the combination of Herrero and Ueda, fails to teach or suggest the network connection and security level limitations, as recited in claim 1.

(4) Appellants have established that the Examiner erred in rejecting claims 1, 14, and 27 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Herrero and Ueda.

DECISION

(1) The Examiner's rejection of claims 1-39 under 35 U.S.C. § 103(a) over the combination of Herrero and Holden is affirmed.

(2) The Examiner's rejection of claims 1, 14, and 27 under 35 U.S.C. § 103(a) over the combination of Herrero and Ueda is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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